

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

NELSON BUTLER,	§	
	§	
Plaintiff,	§	
	§	
v.	§	CIVIL ACTION NO. H-09-2505
	§	
AIDS FOUNDATION OF HOUSTON,	§	
	§	
Defendant.	§	

**MEMORANDUM OPINION AND ORDER**

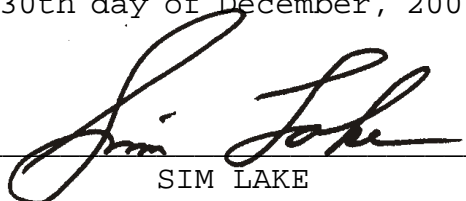
Pending before the court is Defendant Aids Foundation of Houston's Rules 12(b)(5) and 12(c) Motion to Dismiss (Docket Entry No. 3). Although the motion was filed on September 8, 2009, plaintiff, Nelson Butler, has not responded to it. In its motion defendant argues inter alia that plaintiff's claims are barred by limitations. The court agrees.

Plaintiff's Employment Discrimination Complaint (Docket Entry No. 1) states that plaintiff received a Notice of Right to Sue letter from the Equal Employment Opportunity Commission ("EEOC") on May 6, 2009. The notice attached to the complaint reflects that it was mailed on April 30, 2009. Title VII requires that claimants file a civil action within ninety days after the receipt from the EEOC of a statutory notice of right to sue. Nilsen v. City of Moss Point, Miss., 674 F.2d 379, 381 (5th Cir. 1982). The requirement to file a lawsuit within ninety days is strictly

construed. See Ringgold v. National Maintenance Corp., 796 F.2d 769, 770 (5th Cir. 1986). Plaintiff's complaint reflects that he received the notice of right to sue ninety-one days before he filed this action, on August 5, 2009. Accordingly, this action is barred by limitations.

For the reasons stated above, Defendant's Rules 12(b)(5) and 12(c) Motion to Dismiss (Docket Entry No. 3) is **GRANTED**, and this action will be dismissed with prejudice.

**SIGNED** at Houston, Texas, on this 30th day of December, 2009.

  
SIM LAKE  
UNITED STATES DISTRICT JUDGE